Taft/

1717 Dixie Highway, Suite 910 / Covington, Kentucky 41011-4704
Tel: 859.331.2838 / Fax: 513.381.6613
www.taftlaw.com

ROBERT A. BILOTT
513.357.9638
bilott@taftlaw.com

March 1, 2016

BY EMAIL AND REGULAR US MAIL

Gina McCarthy
Administrator
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code: 1101A
Washington, DC 20460

Randy C. Huffman
Cabinet Secretary
WVDEP
601 57th Street, S.E.
Charleston, WV 25304

Shawn M. Garvin
Regional Administrator
USEPA Region 3
1650 Arch Street
Mail Code: 3RA00
Philadelphia, PA 19103-2029

Scott G. Mandirola
Director
Division of Water and Waste Management
WVDEP
601 57th Street, S.E.
Charleston, WV 25304

Re: Request for Immediate Investigation/Abatement/Monitoring/Testing in Response to PFOA Contamination of Cities of Vienna and Parkersburg West Virginia's Drinking Water Supply

Ladies and Gentlemen:

We have been writing to EPA and WVDEP since March of 2001 – for almost *fifteen years* – to try to focus the Agency's attention on the imminent and substantial threat to human health and the environment presented by the contamination of human drinking water supplies with perfluorooctanoic acid ("PFOA" a/k/a "C-8") in the vicinity of the Washington Works Plant owned and operated by E. I. du Pont de Nemours and Company and/or The Chemours Company in Wood County, West Virginia (the "DuPont Plant"). (*See* Ex. A (portions of Feb. 16, 2016, Bilott Letter to EPA).) To date, however, neither EPA nor WVDEP has adopted or released any regulation, guideline, or standard to protect the health of those facing long-term (more than a few days, weeks, or even

months) of exposure to this PFOA in their drinking water. The lack of any such long-term exposure standard is particularly troubling, given the unusually biopersistent nature of PFOA, where even the smallest amount of the chemical in any one or short amount of exposure may be of concern, because each of those individual, even "low" exposures will slowly build up to higher and higher levels in the human body/blood over time.

In light of EPA's and WVDEP's failure to take any definitive action to control or address long-term exposures to PFOA in drinking water, we were ultimately forced to pursue the rights of our clients to obtain immediate clean drinking water and appropriate blood testing/medial monitoring through private litigation. That litigation resulted in a class action settlement agreement approved by a West Virginia state court in 2005 that memorialized DuPont's agreement to offer, design, and pay for the operation and maintenance of "state-of-the-art" water filtration systems for those public and private water supplies in the vicinity of the DuPont Plant where any quantifiable amount (0.05 ppb or more at the time) of PFOA had been found at that time, to pay $70 Million (which was then used to pay for PFOA blood testing and collection of health information for the approximately 70,000 impacted residents at the time), and to pay up to $235 Million for medical monitoring of those residents, if an independent "Science Panel" confirmed that their exposures to PFOA in drinking water had "probable links" to serious disease. That Science Panel ultimately confirmed that six diseases, including kidney cancer, testicular cancer, and ulcerative colitis, were in fact, linked to human exposures to PFOA in drinking water at levels of 0.05 ppb or more, triggering DuPont's payment of appropriate medical monitoring and PFOA blood testing for the impacted residents and the obligation under the 2005 class action settlement for DuPont to continue paying for the water treatment systems indefinitely into the future.

Despite DuPont's agreement in 2005 to provide such benefits to residents impacted by quantifiable amounts of PFOA in their drinking water under our class action settlement agreement, DuPont has refused to extend similar benefits since that time to other impacted communities. For example, when a quantifiable level of PFOA turned up in the City of Parkersburg, West Virginia's municipal water supply in 2006, DuPont refused to extend water treatment, PFOA blood testing, or medical monitoring benefits to Parkersburg residents and aggressively opposed all efforts to do so, including through private litigation. In fact, when EPA asked DuPont in 2006 to enter into a Consent Order to commit to extend water treatment benefits to other communities in the vicinity of the DuPont Plant with PFOA contamination, DuPont refused to do so unless the level of PFOA was 0.5 ppb or above – *many times higher* than the level DuPont had just agreed to under the class action settlement in the same community. Thus, because the level of PFOA in the Parkersburg water supply in 2006 was less than the 0.5 ppb level agreed to by EPA under that 2006 Consent Oder with DuPont, DuPont refused to provide any clean water or testing benefits in Parkersburg, and has continued to refuse to do so to this day (even though PFOA is still present in the Parkersburg water supply

above 0.05 ppb[1]). Consequently, DuPont has knowingly and intentionally allowed the Parkersburg city water customers to continue to consume PFOA-contaminated drinking water for at least *the last decade*, while paying for approximately 70,000 of their surrounding neighbors to receive filtered water during that same period of time.

As noted in our January 20, 2015, letter to EPA, (*see* Ex. A), DuPont only agreed to lower the 0.5 ppb "trigger" for providing clean water in the vicinity of the DuPont Plant to 0.4 ppb under its Consent Order with EPA in 2009, after EPA released its first-ever "provisional health advisory" ("PHA") of 0.4 ppb for *short-term* exposures to PFOA in drinking water. Although EPA has never released a *long-term* PHA for PFOA or formally revised its 0.4 ppb short-term PHA, EPA publicly released guidance on January 28, 2016, advising those exposed to "greater than 100 parts per trillion" PFOA (0.1 ppb) to "not use that water for drinking or cooking, and instead" use bottled water. (*See* Ex. A (attached Jan. 28, 2016, EPA Statement).) Immediately upon becoming aware of EPA's new 0.1 ppb PFOA guidance, we asked EPA and the West Virginia Department of Environmental Protection ("WVDEP") on January 29, 2016, to revise the 2009 Consent Order with DuPont "to reference and incorporate the new 0.1 ppb guideline" so that "any water supply [within the geographical scope of that Consent Order] "with results at or above 0.1 ppb that is not already being treated to remove any such PFOA be addressed accordingly." (Ex. A (attached Jan. 29, 2016, Email from Bilott to EPA).)[2] Neither EPA nor WVDEP have responded.

On February 4, 2014, the Mayor of the City of Vienna, West Virginia, announced during a city council meeting that new water sampling data had been received for the City's public water supply wells and that PFOA had been found at levels above 0.1 ppb in at least one of the public water supply wells. Immediately thereafter, we contacted counsel for DuPont and Chemours ("DuPont"), explained the new 0.1 ppb EPA guidance and finding of more than 0.1 ppb PFOA in the City of Vienna's water supply, and requested on February 5, 2016, that DuPont agree to the following:

1. Offer to the City of Vienna to pay all costs associated with the design, construction, operation and maintenance of an appropriate "state-of-the-art" water filtration system to eliminate PFOA from the City of Vienna water supply, and to pay all costs associated with the securing and delivery of alternate, clean sources of water to the City of Vienna water customers while such filtration system is being designed/constructed;

2. Pay all costs associated with offering to all City of Vienna water customers the exact same medical monitoring benefits (including free PFOA blood testing and doctor's

---

[1] *See* Ex. A (attached chart excerpts showing PFOA water results reported to EPA by the Cities of Vienna and Parkersburg).

[2] As EPA and WVDEP are aware, New Jersey released in 2007 a guideline of 0.04 ppb for long-term exposures to PFOA in drinking water (before the Science Panel data on disease links was even released). Vermont just recently confirmed that it is using an even lower 0.02 ppb PFOA drinking water standard. (*See* Ex. B (Feb. 25, 2016, Statement from Vermont Governor).)

visits) that DuPont is paying for under the C-8 Medical Monitoring Program established as part of the 2005 class action settlement (as such program is described at: www.C-8medicalmonitoringprogarm.com) (the "Monitoring Program"), with all such costs to be paid separately and apart from the Medical Monitoring Fund established under the 2005 class action settlement; and

3. Allow any City of Vienna water customers who have developed or may in the future develop (after consuming City of Vienna drinking water for at least one year) any of the six diseases linked by the Science Panel to PFOA drinking water exposures (testicular cancer, kidney cancer, ulcerative colitis, thyroid disease, pregnancy-induced hypertension/preeclampsia, and hypercholesterolemia) to pursue any personal injury/wrongful death/punitive damage claims they may have against DuPont subject to the same agreement by DuPont not to contest "general causation" as exists for class members under the 2005 class action settlement.

As of today's date, DuPont has neither responded nor agreed to provide any of these requested forms of relief with respect to the City of Vienna (or Parkersburg) water supply. Instead, DuPont is knowingly allowing these water customers to continue to be exposed to PFOA in their drinking water on an on-going, daily basis, knowing that each day of exposure will allow ever-increasing amounts of PFOA to build up to higher and higher levels in the residents' blood. According to information released by the City of Vienna on February 23, 2016, PFOA has now been found to be present at levels exceeding 0.1 ppb in 6 out of the 8 water supply wells. (*See* Ex. C (attached Feb. 24, 2016, Newspaper Article.)

Based on our current understanding of the available scientific data relating to the biopersistence, toxicity, and adverse human health effects and risks to humans exposed for one year or more to 0.05 ppb or more PFOA in their drinking water, including testicular cancer, kidney cancer, ulcerative colitis, thyroid disease, pregnancy-induced hypertension/preeclampsia, and hypercholesterolemia, (*see* http://www.c8sciencepanel.org), we believe that the presence of PFOA in the public drinking water of the Cities of Vienna and Parkersburg, West Virginia, is a present health threat and may present an imminent and substantial endangerment to health or the environment, that can and should be investigated, abated, monitored (including through community PFOA blood testing and medical monitoring of the nature set forth in the existing Monitoring Program), and remediated under applicable federal and state law, including but not limited to, the Safe Drinking Water Act, the Clean Water Act, and the Resource Conservation and Recovery Act.

EPA has considered PFOA to be a "hazardous waste" under RCRA for more than a decade. (*See e.g.*, Ex. D at 45 (excerpt from ruling in EPA case against DuPont in 2005).) The State of Minnesota categorized PFOA as a hazardous substance under state law in 2007, and the State of New York even designated a site with PFOA drinking water contamination a state Superfund cleanup site after also classifying PFOA as a hazardous substance under state law. (Ex. E.) EPA, itself, even confirmed that the

presence of elevated levels of PFOA in drinking water near the DuPont Plant may present an imminent and substantial endangerment to health or the environment in its prior Consent Orders with DuPont on the topic. (*See, e.g.*, EPA/DuPont 2009 Consent Order.) New York and Vermont have both ordered that bottled water be used in those locations exceeding EPA's and/or the states' current guidelines. (*See e.g.,* Exs. C & E.) To date, however, neither DuPont, EPA, nor WVDEP have taken any steps to investigate, monitor, abate, and/or remediate this imminent and substantial threat to the City of Vienna or City of Parkersburg customers, or to insure that any alternative source of water is available that is free of PFOA.

We, therefore, request, on behalf of the City of Vienna and City of Parkersburg public water customers, that your Agencies take immediate steps to investigate, monitor, abate, and remediate the PFOA contamination present in both city's public water supply in the manner discussed above, and to insure that alternative water sources (bottled water or otherwise) are immediately available where appropriate while such activities are undertaken.

Very truly yours,

Robert A. Bilott

Exs. A-E

cc: Earl Ray Tomblin, Governor, State of West Virginia (w/Exs.)
Randy Rapp, Mayor of the City of Vienna, West Virginia (w/Exs.)
James E. Columbo, Mayor, City of Parkersburg, West Virginia (w/Exs.)
Danny Jones, Mayor, City of Charleston, West Virginia (w/Exs.)
Bill Summers, Mayor, Town of North Hills, West Virginia (w/Exs.)
Bob Tebay, Wood County Commissioner (w/Exs.)
David Blair Couch, Wood County Commissioner (w/Exs.)
Stephen Gainer, Wood County Commissioner (w/Exs.)
Michael A. Miller, Board Chairman, Central Boaz/Claywood Park PSD (w/Exs.)
Harry G. Deitzler, Esq (w/Exs.)
R. Edison Hill, Esq. (w/Exs.)
Larry A. Winter, Esq. (w/Exs.)

EXHIBIT A

Taft/

1717 Dixie Highway, Suite 910 / Covington, Kentucky 41011-4704
Tel: 859.331.2838 / Fax: 513.381.6613
www.taftlaw.com

ROBERT A. BILOTT
513.357.9638
bilott@taftlaw.com

February 16, 2016

BY EMAIL AND REGULAR U.S. MAIL

Gina McCarthy
Administrator
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave., N.W.
Mail Code 1101A
Washington, D.C. 20460

Re: PFOA Drinking Water Contamination

Dear Administrator McCarthy:

As indicated in the attached examples of our prior correspondence to EPA, including our letters of November 9, 2015, and January 20, 2015, to EPA Regions III and V (extra copies attached), we have been writing to EPA since March of 2001 – for almost *fifteen years* – to try to focus the Agency's attention on the imminent and substantial threat to human health and the environment posed by the contamination of human drinking water supplies with perfluorooctanoic acid ("PFOA" a/k/a "C-8").[1] In our letter of November 9, 2015, we specifically highlighted the fact that recent testing of public water supplies across the country indicated the presence of PFOA in numerous locations at levels exceeding the level of PFOA (0.05 ppb) where six serious diseases, including cancer, were found by independent scientists to be linked to PFOA exposures in community residents. (*See* attached. *See also* www.c8sciencepanel.org .) In response, EPA indicated in a letter dated December 8, 2015, that it was working on a guideline for "lifetime" exposures to PFOA in drinking water, which it expected to be able to release sometime "by early 2016." (*See* attached.)

On January 28, 2016, EPA noted that it was still working on "developing a lifetime health advisory level for PFOA," but that,"[w]hile this work continues," EPA

[1] We also recently have communicated with EPA Region IV to try to obtain EPA's assistance in investigating and addressing significantly elevated PFOA blood levels among Northern Kentucky residents, (*see* attached), but, so far, EPA has still not responded.

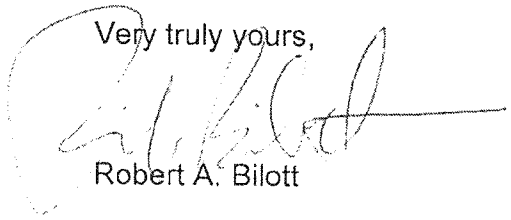
"recommends" that water containing more than 0.1 ppb PFOA not be used for drinking or cooking and that those with such PFOA-contaminated water sources use bottled water. (*See* attached.) Thus, at a minimum, it appears that EPA has revised its guideline for short-term, temporary exposures to PFOA in drinking water from 0.4 ppb to 0.1 ppb. What is not clear, however, is the extent to which members of the public exposed to levels of PFOA exceeding 0.1 ppb in different areas across the country (particularly those with long-term, "lifetime" exposures) have been informed of those exposures or have seen the EPA's recommendation to use bottled water or some other alternative water source in those situations.

In contrast to the public, EPA is aware of several such exposure scenarios by virtue of the data supplied to EPA by various public water supplies under EPA's unregulated contaminant monitoring program ("UCMR program"). Under the UCMR program, certain public water supplies have been sampling for and reporting to EPA the presence of PFOA in their drinking water since at least 2013, but not all of those water supplies have necessarily informed their customers of the detections of PFOA, believing that, because the chemical is not one of the "regulated" water contaminants for testing, the chemical is not "required" to be included on the annual customer water reports. We have attached a list of what we believe to be the currently-available public water supply sampling results for PFOA available in the large file of raw data posted to EPA's UCMR program webpage.[2]

As noted in our prior correspondence, we request that EPA take those steps necessary to immediately and properly disclose, investigate, and address elevated levels of PFOA in impacted communities, whether reflected in elevated drinking water exposures or elevated blood levels. At a minimum, such steps should include an immediate revision to EPA's March 2009 Consent Order with DuPont to incorporate EPA's latest 0.1 ppb guideline for PFOA in drinking water, given recent detections of PFOA above that level in at least one impacted local community - Vienna, West Virginia – as we requested in our January 29, 2016, email to EPA . (*See* attached.)

Thank you.

Very truly yours,



Robert A. Bilott

RAB:mdm
Attchs.

[2] We understand that EPA is only currently requiring the reporting of PFOA at concentrations at or above 0.02 ppb (even though current analytical methods allow quantification and detection at much lower levels), so this list does not include any detection below that arbitrary 0.02 ppb reporting level.

Taft/

425 Walnut Street, Suite 1800 / Cincinnati, Ohio 45202-3957
Tel: 513.381.2838 / Fax: 513.381.0205
www.taftlaw.com

ROBERT A. BILOTT
513.357.9638
bilott@taftlaw.com

January 20, 2015

BY EMAIL AND REGULAR U.S. MAIL

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region V
77 West Jackson Blvd.
Mail Code: R-19J
Chicago, IL 60604-3507

Shawn M. Garvin
Regional Administrator
United States Environmental Protection Agency
Region III
1650 Arch Street
Mail Code: 3RA00
Philadelphia, PA 19103-2029

Randy C. Huffman
Cabinet Secretary
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

Re: *In the Matter of: E.I. du Pont de Nemours and Company*
(Docket Nos. SDWA-03-2009-0127 DS – SDWA-05-2009-0001)

Dear Ms. Hedman, Mr. Garvin and Mr. Huffman:

We first wrote to US EPA and WVDEP in March of 2001 – over 13 years ago – to alert your Agencies to the imminent and substantial threat to human health and the environment posed by the contamination of human drinking water supplies with perfluorooctanoic acid ("PFOA" a/k/a "C-8") released from E. I. du Pont de Nemours and Company's ("DuPont's) Washington Works Plant in Wood County, West Virginia (the "DuPont Plant"). (*See* Ex. A.) In that original letter, we alerted your Agencies to the fact that PFOA was poisoning drinking water supplies in the vicinity of the DuPont Plant at levels exceeding a 1 part per billion (1 ppb) exposure guideline that DuPont had adopted for PFOA in community water more than a decade earlier, and asked your

Agencies to take immediate action to address and abate that health threat under applicable state and federal laws, including the Clean Water Act ("CWA"), the Safe Drinking Water Act ("SDWA"), the Toxic Substances Control Act ("TSCA"), and the Resource Conservation and Recovery Act ("RCRA"). (*See id.*) Soon thereafter, US EPA launched a "priority review" of PFOA under TSCA and began the process to establish federal safety limits for PFOA in drinking water, beginning with the release of a draft PFOA risk assessment in 2003. WVDEP, on the other hand, has still not even begun the process of trying to establish or set any regulatory safety levels for PFOA, choosing, instead, to defer to whatever US EPA ultimately decides. In the meantime, given the lack of any enforceable federal or state regulatory safety limits for PFOA in drinking water, US EPA was left with having to address this serious health threat by negotiating "Consent Orders" with DuPont through which US EPA could incorporate only such terms as to which DuPont ultimately would "consent."

The first such US EPA Consent Order was entered in 2002, soon after US EPA received our original letter. Rather than require clean water whenever DuPont's own 1 ppb drinking water exposure level was exceeded (which 1 ppb level had been created by DuPont's own scientists, had been followed internally by DuPont for more than a decade, and was still being followed internally by DuPont at that time), DuPont would only "consent" to providing clean water through this new Consent Order, if the level of PFOA exceeded a significantly higher 14 ppb level that DuPont's outside consultants had generated.

Just two months later, in May 2002, DuPont succeeded in forcing US EPA to raise that 14 ppb level to 150 ppb, based on the terms of a separate, privately-negotiated deal between DuPont and WVDEP under which WVDEP allowed DuPont to collaborate with WVDEP and its consultant to create a new, higher trigger level for clean water. DuPont then held that 150 ppb number out to the public for the next several years as the appropriate, government-endorsed safety number for PFOA in drinking water, even though, internally, DuPont's own scientists still supported a 1 ppb exposure guideline for PFOA in community drinking water supplies.

DuPont only "consented" to a new Consent Order with US EPA on these issues in 2006, after significant additional health risk information had been released on PFOA, including a final report from US EPA's own Science Advisory Board, where the majority of the Board recommended that PFOA be classified as a "likely" human carcinogen. Upon review of this new data, US EPA's scientists had determined that the 150 ppb trigger picked by DuPont and WVDEP was "not protective of human health and must be replaced by a lower threshold value of 0.20 ppb." (Ex. B. at 1.) DuPont informed US EPA at the time that it agreed, based on this new data, that "it is prudent to minimize, where possible, exposure to biopersistent materials such as PFOA," and that a new, lower clean water trigger number should be adopted "to help promote reductions of PFOA in blood levels through alternate drinking supplies." (Ex. C at 3-4.) According to DuPont, a "median serum/drinking water ratio for PFOA was calculated to be 105, i.e.,

for every 1 ppb of PFOA in drinking water ingested by community residents; 105 ppb of PFOA will be present in serum." (*Id.* at 9.) At the 150 ppb trigger level then in effect, DuPont noted that "a serum level of approximately 15 ppm [15,000 ppb] can be predicted," which "exceeds the current occupational exposures" where adverse health effects were being reported in the new data. (*Id.* at 11.) According to DuPont, reducing the clean water trigger from 150 ppb to 0.5 ppb - not 0.20 ppb – would be sufficient, as it "would result in approximately 50 ppb of PFOA in serum," which DuPont argued was "within the range found in the general population" where no such adverse health effects were purportedly being found at the time. (*Id.*) Thus, in light of DuPont's refusal to agree to a safe drinking water trigger level any lower than 0.5 ppb at that time, the new US EPA/DuPont Consent Order in 2006 lowered the PFOA clean drinking water threshold from 150 ppb to 0.5 ppb PFOA. US EPA was not able to obtain DuPont's "consent" to lower the threshold for safe water any further until 2009, after US EPA released its first "provisional health advisory" ("PHA") for short-term, temporary exposure to C-8 in drinking water of 0.4 ppb. At that point, DuPont finally agreed to lower the clean water trigger in its Consent Order with US EPA - but only from 0.5 ppb to 0.4 ppb.

US EPA made clear in its 2009 Consent Order with DuPont that the 0.4 ppb C-8 trigger level for clean water was a "temporary value that will be re-evaluated when EPA determines a reference dose under TSCA or establishes a drinking water standard for C-8, whichever comes first." (2009 Consent Order, at ¶ 46.) US EPA also made clear that it reserved "the right to modify the [0.4 ppb C-8 clean water trigger] identified in this Order if information previously unknown to EPA is received and EPA determines that this previously unknown information, together with any other relevant information, indicates that [such trigger level] may not be protective of human health." (*Id.* at ¶ 47.)

Since entry of the current Consent Order in March of 2009, extensive additional information has been released in the scientific and peer-reviewed literature confirming that the 0.4 ppb trigger level for clean water is not protective of human health for long-term exposures and should be revised. For example, in December 2009, US EPA released its Long-Chain Perfluorinated Chemicals (PFCs) Action Plan, identifying C-8 as "raising serious health and environmental concerns," which could justify significant "risk reduction measures to protect human health and the environment." Then, in 2011-2012, an independent C-8 Science Panel – jointly selected and fully-funded by DuPont – confirmed probable links between exposure to PFOA in drinking water as low as 0.05 ppb and six serious human diseases: 1) kidney cancer; 2) testicular cancer; 3) ulcerative colitis; 4) thyroid disease; 5) pregnancy-induced hypertension/preeclampsia; and 6) hypercholesterolemia. Each of those links was based on the independent Science Panel's review of data (including PFOA blood tests, blood chemistries, and medical records reviews/verifications) from approximately 70,000 people actually exposed to PFOA in drinking water in the vicinity of the DuPont Plant, along with all other available data, including peer-reviewed studies from all over the world and DuPont's own worker data. Each of the Science Panel's findings ultimately was

confirmed in published, peer-reviewed papers. US EPA was encouraged through public comments and formal peer reviewers to consider and incorporate all such important new data (along with additional, significant new toxicological data, including new data on mammary gland impacts and from studies in mice), in the context of finalizing US EPA's "Health Effects Document for Perfluorooctanoic Acid," which was released in draft form to the public in 2014 but, as of today's date, still has not been finalized.

Although US EPA still has not released a guideline for long-term, chronic exposure to PFOA in drinking water or finalized its PFOA health effects document, European regulators have moved forward. Just this month, the European Chemicals Agency (ECHA) publicly released a report from Germany and Norway recommending significant new restrictions on PFOA in light of the more current health effects data, specifically including the findings of the C8 Science Panel linking very low level PFOA exposure in drinking water (as low as 0.05 ppb) with 6 diseases, including two forms of cancer. (*See* http://echa.europa.eu/documents/10162/e9cddec6-3164-473d-b590-8f9caa50e7 .) Particularly significant in this new European report are new risk calculations revealing that levels of PFOA in the blood of people exposed to PFOA at the levels allowed under the existing 2009 Consent Order (PFOA drinking water levels as high as 0.5 ppb) would far exceed the blood risk levels derived using the latest health effects data. This is because significant adverse health effects (including cancer) were found to be linked to PFOA exposures in humans as low as 0.05 ppb in drinking water – some *ten times lower* than the current level allowed under the 2009 Consent Order. (*See also* Post, G.B., *et al.*, "Perfluorooctanoic acid (PFOA), an emerging drinking water contaminant: A critical review of recent literature," 116 *Environ. Res.* 93-117 (July 2012).)

Although neither the European report nor US EPA's work to set a safety level for long-term chronic exposure to PFOA in drinking water has been completed, US EPA retains both the right and responsibility to modify the 2009 Consent Order in light of new health data on PFOA to make sure that human health is protected. US EPA should consider the new PFOA health effects data and European safety calculations noted above to evaluate whether there is a current or imminent and substantial threat or endangerment to human health that mandates steps be taken to modify the 2009 Consent Order to require DuPont to provide for alternate/clean drinking water for any human drinking water supply in the vicinity of the DuPont Washington Works Plant where PFOA has been detected at levels below the current 0.4 ppb trigger level established in that Consent Order. In New Jersey, for example, state regulators already are evaluating the safety of drinking water supplies by comparing PFOA water levels to a 0.04 ppb "health-based drinking water guidance level" developed specifically for the purpose of assessing long-term, chronic exposures to PFOA in human drinking water supplies. (*See, e.g.*, Ex. D.)

As both US EPA and WVDEP are aware, there are at least two public drinking water supplies in the vicinity of the DuPont Plant in West Virginia where sampling for

PFOA revealed levels of PFOA in the treated water above the 0.05 ppb level of exposure considered in the C8 Science Panel studies: 1) the City of Parkersburg, West Virginia (most recent rounds of CCL3 sampling data submitted to US EPA and now posted on US EPA's website revealed PFOA as high as 0.0631 ppb after treatment on 3/25/14); and 2) the City of Vienna, West Virginia (reports submitted by DuPont to US EPA and posted in US EPA' public dockets confirm 0.056 ppb PFOA after treatment on last-known PFOA sampling date of 5/10/07). (*See* Ex. E). DuPont successfully used US EPA's and WVDEP's continuing failure to adopt any final long-term, chronic exposure limits for PFOA in drinking water to thwart all efforts by impacted Parkersburg residents to require DuPont to provide clean water through the court system. (*See, e.g.,* 9/30/08 Memorandum Opinion and Order in *Rhodes, et al., v. E.I. du Pont de Nemours and Co.,* Civil Action No. 6:06-cv-00530 (S.D. W. Va.) at 1 (West Virginia federal court denied Parkersburg residents' attempts to bring community/class-wide claims against DuPont for clean water through the judicial system, noting that, although the "plaintiffs have presented compelling evidence that exposure to C-8 may be harmful to human health, and the evidence certainly justifies the concerns expressed by the plaintiffs in this case," the Court could not certify those claims to proceed through the Court system at that time: "The fact that a public health risk may exist is more than enough to raise concern in the community and call government agencies to action, but it does not show the common individual injuries needed to certify a class action" for relief through the judicial system.).)

Thus, despite DuPont's acknowledgment to US EPA by at least 2006 that "it is prudent to minimize, where possible, exposure to biopersistent materials such as PFOA" and purported desire "to help promote reductions in PFOA in blood levels through alternate drinking supplies," (Ex. C at 3-4), DuPont aggressively fought and ultimately succeeded in preventing Parkersburg residents from obtaining clean water through the court system, even though DuPont knew that failure to remove PFOA from that water would allow PFOA to steadily build up and accumulate in the blood of the residents drinking that water at a ratio of approximately 105 ppb PFOA in blood for every 1 ppb PFOA in their drinking water. US EPA and WVDEP, likewise, have not required any action to date to abate these on-going exposures in either Parkersburg or Vienna, despite knowledge of the on-going contamination (and associated accumulation and build- up of PFOA in residents' blood) for almost a decade.

US EPA should re-assess its position with respect to these on-going PFOA exposures in light of existing health data. US EPA also should consider whether any steps need to be taken to insure that the appropriate parties remain bound under its existing Consent Orders and Memoranda of Understanding with DuPont on PFOA issues, in light of DuPont's recently announced intentions to soon "spin-off" and/or jettison certain operations and liabilities of DuPont relating to PFOA to a new entity to be known as "Chemours," (*see* Ex. F).

Very truly yours,

Robert A. Bilott

RAB:mdm
Encls: Exs. A-F
cc: Elizabeth Doyle, USEPA (w/encls.)(by regular U.S. mail)

United States Environmental Protection Agency
Regional Administrator
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

FEB 2 3 2015

Robert A. Bilott
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957

Dear Mr. Bilott:

Thank you for your January 20, 2015 letter requesting that the U.S. Environmental Protection Agency consider new health effects data to evaluate the 0.40 parts per billion (ppb) site-specific action level for perfluorooctanoic acid (PFOA) in EPA's 2009 consent order with DuPont's Washington Works Facility in West Virginia.

On February 28, 2014, EPA released a draft health effects document for PFOA for public comment and peer review: https://peerreview.versar.com/epa/pfoa/. When the document is finalized later this year a lifetime health advisory will be developed, which may replace our 2009 PFOA provisional (short-term) health advisory of 0.4 ppb. When that process is complete the action level established in the March 10, 2009 consent order between US EPA and DuPont may be re-evaluated.

Again, thank you for your letter. If you have further questions, please contact Debra Klassman, Associate Regional Counsel, of my staff, at 312-886-6742, or Lori Kier, Senior Assistant Regional Counsel, of Mr. Garvin's staff in Region 3, at 215-814 2656.

Sincerely,

Susan Hedman
Regional Administrator

Taft

1717 Dixie Highway, Suite 910 / Covington, Kentucky 41011-4704
Tel: 859.331.2838 / Fax: 513.381.6613
www.taftlaw.com

ROBERT A. BILOTT
513.357.9638
bilott@taftlaw.com

November 9, 2015

BY EMAIL AND REGULAR U.S. MAIL

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region V
77 West Jackson Blvd.
Mail Code: R-19J
Chicago, IL 60604-3507

Randy C. Huffman
Cabinet Secretary
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

Shawn M. Garvin
Regional Administrator
United States Environmental Protection Agency
Region III
1650 Arch Street
Mail Code: 3RA00
Philadelphia, PA 19103-2029

Re: *In the Matter of: E.I. du Pont de Nemours and Company*
(Docket Nos. SDWA-03-2009-0127 DS – SDWA-05-2009-0001)

Dear Ms. Hedman, Mr. Garvin and Mr. Huffman:

This letter serves as a follow up to my letter to you dated January 20,2015, (extra copy enclosed), to which US EPA Region 5 responded on February 23, 2015, (extra copy enclosed), but to which neither US EPA Region 3 nor the West Virginia Department of Environmental Protection ("WVDEP") ever responded.

As noted in my prior letter, we first asked your agencies to take immediate action to address on-going contamination of human drinking water supplies with PFOA more than 14 years ago. Since that time, WVDEP has done nothing to establish any regulatory standards or limits for PFOA in drinking water, choosing, instead, to simply

defer to whatever US EPA eventually decides to do. US EPA, however, *still* has not established – nor even proposed – any standards or limits for long term (more than a few weeks or even a few months) exposure to PFOA in drinking water.

In the meantime, data collected from public drinking water supplies across the country and provided directly to US EPA has confirmed the presence of PFOA in public drinking water supplies in over 20 states in all regions of the Country. (*See* http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/data.cfm.) As US EPA is aware, the levels of PFOA found in many of these water supplies – more than a dozen – exceed the 0.05 ppb PFOA level where probable links were found between such PFOA drinking water exposure levels and six serious diseases, including cancer. (*See id.*) Even more exceed the levels that have been set or recommended by other regulatory bodies (such as the State of New Jersey) for long-term PFOA exposures, or the levels that the most recent scientific research now indicates may be excessive. (*See* enclosed 1/20/15 letter (and references).)

Nevertheless, when US EPA Region 5 responded to my prior letter, it indicated that no further action would be taken by US EPA to address any of this on-going contamination of public water supplies until its previously-released "draft health effects document for PFOA" was finalized, which Region 5 stated would occur "later this year." As we are now nearing the end of the year and the document still has not been finalized (nor has any information been released suggesting when any such action might occur), we request that US EPA confirm the schedule for finalizing the document and moving forward with appropriate actions to protect the public health.

Very truly yours,

Robert A. Bilott

RAB:mdm
Encls:
cc: Elizabeth Doyle, USEPA (w/encls.)(by regular U.S. mail)

13988385.1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

DEC 08 2015

Robert A. Bilott, Partner
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957

Dear Mr. Bilott:

Thank you for your November 9, 2015 letter requesting that the U.S. Environmental Protection Agency provide you with an update on EPA's draft perfluorooctanoic acid (PFOA) health effects document, which addresses long-term PFOA exposure. EPA released the draft PFOA health effects document in February 2014 for purposes of public comment (scientific views) and peer review.

Please be advised that the timeline for developing a lifetime health advisory level for PFOA has changed slightly since EPA Regions 3 and 5's combined response to you dated February 23, 2015. The EPA Office of Water now expects to complete its efforts to develop a revised Health Advisory for both PFOA by early 2016.

Once a final risk assessment is completed, or if further information about the health effects of PFOA indicates that it is necessary, EPA may re-evaluate the PFOA action level established in the March 9, 2010, Safe Drinking Water Act Order on Consent between EPA and DuPont.

Thank you for your continued interest in these matters. If you have further questions, please contact Lori Kier, Esq., Senior Assistant Regional Counsel, of Region 3 at 215-814 2656, or Jacqueline Clark, Esq., Associate Regional Counsel, in Region 5, at 312-353-4191.

Sincerely,

Jon M. Capacasa
Director, Water Protection Division

EPA Statement on Private Wells in
The Town of Hoosick and Village of Hoosick Falls, NY
January 28, 2016

The EPA is developing a lifetime health advisory level for PFOA. While this work continues, the EPA recommends that people in the Town of Hoosick and the Village of Hoosick Falls who have private wells at which PFOA has been found to be present at a level greater than 100 parts per trillion not use that water for drinking or cooking, and instead take advantage of the free bottled water that is being made available at the Tops Market in Hoosick Falls. In addition, the EPA recommends that people in the Town of Hoosick and the Village of Hoosick Falls who have private wells that have not yet been tested for the presence of PFOA ask the New York State Department of Health to test their well and, in the meantime, take advantage of the bottled water available at the Tops Market in Hoosick Falls.

Bilott, Robert A.

From:	Bilott, Robert A.
Sent:	Friday, January 29, 2016 4:50 PM
To:	'Kaplan.robert@Epa.gov'; 'Garvin.shawn@Epa.gov'; 'Randy.C.Huffman@Wv.Gov'; 'Klassman.debra@Epa.gov'; 'Kier.lori@Epa.gov'
Subject:	FW: In the Matter of: E.I. du Pont de Nemours and Comapny (Docket Nos: SDWA-03-2009-0127 DS/ SDWA-05-2009-0001)
Attachments:	EPA Response Letter 2 23 15.pdf; epa_statement_on_private_wells_in_the_town_of_hoosick.pdf; [Untitled].pdf

Ladies and Gentlemen:

Given the updated guidance released by US EPA last night (attached) referencing a 0.1 ppb action level for PFOA in human drinking water, we repeat the request we made over a year ago (as set forth in our attached letter) that steps be taken immediately to insure that the 2009 Consent Order referenced in our letter is modified accordingly to reference and incorporate the new 0.1 ppb guideline and that all appropriate parties are and/or remain bound by its terms. (According to EPA's earlier response (also attached), such actions would be considered when such a new guidance number was released.) We also request that any water supply previously tested or to be tested under that Consent Order with results at or above 0.1 ppb that is not already being treated to remove any such PFOA be addressed accordingly. Thank you.

Rob Bilott

lott, Robert A.
Sent: Tuesday, January 20, 2015 4:32 PM
To: hedman.susan@epa.gov; Garvin.shawn@Epa.gov; Randy.C.Huffman@Wv.Gov
Cc: Elizabeth A. Doyle (doyle.elizabeth@epa.gov)
Subject: In the Matter of: E.I. du Pont de Nemours and Comapny (Docket Nos: SDWA-03-2009-0127 DS/ SDWA-05-2009-0001)

Document attached.

Taft/

Robert A. Bilott / Partner
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957
Tel: 513.381.2838 • Fax: 513.381.0205
Direct: 513.357.9638 • Cell: 513.477.7655
www.taftlaw.com / bilott@taftlaw.com

No.	PWS	State	Sample Location	Date	Results
5	Artesian Water Supply	DE	Jefferson Farm Plant EPTDS	2013/07/07	0.06
5	Artesian Water Supply	DE	Jefferson Farm Plant EPTDS	2014/01/28	0.04
5	Artesian Water Supply	DE	Castle Hills EPTDS	2014/07/16	0.05
5	Artesian Water Supply	DE	Castle Hills EPTDS	2013/07/17	0.04
5	Artestian Water Supply	DE	Midvale Plant EPTDS	2013/08/12	0.04
5	Artestian Water Supply	DE	Midvale Plant EPTDS	2014/01/28	0.04
5	Artesian Water Supply	DE	Wilmington Manor 1 Plant EPTDS	2013/07/17	0.03
5	Artesian Water Supply	DE	Wilmington Manor 1 Plant EPTDS	2014/01/28	0.03
6	City of Vienna	WV	Treatment plant for Well 11/14 (EP#3 after treatment)	2015/05/27	0.129
6	City of Vienna	WV	Treatment plant for Well 7/8 (EP #1 after treatment)	2015/05/27	0.0991
6	City of Vienna	WV	Treatment plant for Well 9/10 (EP #2 after treatment)	2015/05/27	0.0758
7	Warrington Township Water & Sewer Department	PA	Wells 1, 2 & 6 EP	2014/11/11	0.11839
7	Warrington Township Water & Sewer Department	PA	Well 3 EP	2014/11/11	0.02015
7	Warrington Township Water & Sewer Department	PA	Well 9 EP	2015/05/11	0.02883

No.	PWS	State	Sample Location	Date	Results
11	Town of Cumberland	RI	Abbott Run #1 TP EPTDS	2015/02/18	0.081
12	Dover Water Department	NH	Griffin Well Treatment Plant (finished water sample)	2014/03/24	0.067
13	Emerald Coast Utilities Authority	FL	Hagler (EP tap)	2014/11/11	0.065
13	Emerald Coast Utilities Authority	FL	Hagler (EP tap)	2014/06/17	0.043
13	Emerald Coast Utilities Authority	FL	Bronson East (EP tap)	2014/05/14	0.024
14	Parkersburg Utility Board	WV	Treatment Plant (Entry Point after Treatment)	2014/03/25	0.0631
14	Parkersburg Utility Board	WV	Treatment Plant (Entry Point after Treatment)	2014/09/09	0.0412
15	Hyannis Water System	MA	Mary Dunn Well 2 EPTDS	2014/05/22	0.062
15	Hyannis Water System	MA	Mary Dunn Well 2 EPTDS	2013/11/20	0.02
15	Hyannis Water System	MA	Maher Treatment Plant EPTDS	2014/05/22	0.02
15	Hyannis Water System	MA	Mary Dunn Well 3 EPTDS	2014/05/22	0.02
16	Colbert County Rural Water System	AL	West Lawrence (WL meter)	2014/12/10	0.06
16	Colbert County Rural Water System	AL	West Lawrence (WL meter)	2014/06/16	0.02
16	Colbert County Rural Water System	AL	Cherokee (North Pike meter)	2014/06/16	0.02
16	Colbert County Rural Water System	AL	Muscle Shoals (Muscle Shoals meter)	2014/06/16	0.02

EXHIBIT B

GOV. SHUMLIN UPDATES ON POTENTIAL WATER CONTAMINATION IN NORTH BENNINGTON

MONTPELIER – February 25, 2016 – Test results received this morning indicate that a number of water sources in North Bennington show varying levels of a potentially harmful chemical. The public water supply has been tested and is not affected. The Department of Environmental Conversation (DEC) is distributing drinking water to those affected or potentially affected as additional tests are conducted.

The chemical, Perfluorooctanoic (PFOA), is a possible carcinogen. Following news reports of potential PFOA contamination in Hoosik Falls, N.Y., DEC took the proactive step of testing water supplies in North Bennington. Samples from the immediate are of concern were tested, along with the public drinking supply. Results were received this morning that showed the public water supply has not been affected but some residential and commercial wells are.

In Vermont, the standard level of PFOA is 20 parts per trillion. Results from a wastewater treatment plant well – water that is not used for drinking – showed PFOA levels of 618 parts per trillion. A business in the area showed levels of 168 parts per trillion. Results from three residential wells showed a range of 40 parts per trillion to 2,880 parts per trillion.

PFOA is what is known as an emerging containment. It is not a chemical that is tested for in standard water tests or listed on a list of hazardous chemicals under federal law that require management. There is no at-home test that detects PFOA. The test for PFOA require samples be sent out-of-state. DEC has identified potentially four more residential wells that may be affected. Testing is being conducted on those wells and residents are being provided drinking water.

PFOA can be harmful when ingested. It is not absorbed through the skin if present in water used for washing.

Two community meetings have been scheduled. Tomorrow at 4 p.m. at the North Bennington Firehouse. And Monday at 6 p.m. during Bennington Town Meeting Day. DEC officials and others will be on hand to answer questions.

If you have questions or concerns or need to request a well be tested, please call 802 249 5324.

###

VERMONT AGENCY OF NATURAL RESOURCES
DEPARTMENT OF HEALTH

February 26, 2016

Facts about PFOA for residents of North Bennington

Background
The Agency of Natural Resources/Department of Environmental Conservation tested a number of water sources near the former Chemfab plant in North Bennington, and results show varying levels of a potentially harmful chemical, perfluorooctanoic acid, or PFOA. The public water supply has been tested and is not affected, but five other residential and commercial wells had test results ranging from 40 to nearly 2,500 parts per trillion (ppt). Additional residential wells in the area that may have been affected will be tested.

What is PFOA?
PFOA is a manufactured chemical that belongs to a group of chemicals used to make household and commercial products that resist heat and chemical reactions, and repel oil, stains, grease and water. These chemicals are widely found in nonstick cookware, stain-resistant carpets and fabrics, water repellant clothing, paper and cardboard food packaging and fire-fighting foam.

PFOA does not break down easily and therefore persists for a very long time in the environment, especially in water. Its toxicity and persistence in the environment means it is a potential danger to human health and the environment.

Why is PFOA contamination a health concern?
PFOA is a health concern because, if ingested over time, it could lead to health effects including liver toxicity, kidney damage, increased risk for cardiovascular disease, adverse effects on the reproductive system, immune system, infant and child development, and possibly some cancers, specifically testicular, prostate, thyroid and kidney cancer.

The Vermont Department of Health has established a health level of 20 parts per trillion (ppt) for drinking water. If water contains more than 20 ppt, it should not be used for drinking, food preparation, cooking, tooth brushing, or any other way it could be ingested.

How can I get my private well tested?
Contact Chuck Schwer at the Department of Environmental Conservation by calling 802-828-1138 (switchboard), or 802-249-5324 (cell) or by emailing chuck.schwer@vermont.gov.

Laboratories in Vermont are not equipped to test for PFOA. The Department of Environmental Conservation will collect water samples to send to an out-of-state lab for this specialized testing.

If my well water is contaminated with PFOA, or I am concerned about possible contamination with PFOA –

Should I drink the water?
No. Use bottled water or water from a known safe source for drinking, food preparation, cooking, brushing teeth – any way that you could ingest the water. The Department of Environmental Conservation is distributing bottled water to residences that have PFOA detected, and those potentially affected but not yet tested.

The public drinking water supply in North Bennington has been tested and is not affected.

Is it OK to shower or bathe?
Routine showering or bathing would not likely cause a significant exposure. Studies have shown very limited absorption of PFOA through the skin.

As a precaution, we recommend shorter showers, and use of bathroom fans (or opening bathroom windows) to help remove water droplets (aerosols) formed during showering. The shorter the shower, the lower the possible exposure to PFOA-contaminated water. We also recommend that children or people with skin conditions (rashes, cuts, abrasions, etc.) avoid prolonged contact with PFOA-contaminated water in the bath. Children are more likely to swallow while playing.

What about brushing teeth?
Use bottled water for brushing teeth.

Can I do laundry and wash my dishes?
Yes. Doing laundry or washing dishes is not likely to pose a significant exposure to PFOA. If washing dishes by hand, you can minimize exposure by wearing rubber gloves, especially if you have a rash, cuts or abrasions on your hands.

Can I use a humidifier?
If you must use a humidifier, only use water from a safe source.

Would an in-home treatment system help filter PFOA out of the water?
If your water has tested positive for PFOA, the Department of Environmental Conservation will be coordinating the installation of in-home water treatment.

Carbon filtration and reverse osmosis are two technologies that can remove organic contaminants such as PFOA from water. While there are currently no commercially available point-of-use filters (filters attached to a tap), or whole house filters specifically certified by the National Sanitation Foundation to remove PFOA, any activated carbon or reverse osmosis system should be able to reduce PFOA levels. The Minnesota Department of Health tested several point of use water treatment devices and found many to be effective.

If a treatment system is used, it is important to follow the manufacturer's guidelines for maintenance and operation – and periodic testing of the treated water would be necessary to ensure that the PFOA level stays below the health advisory for drinking water.

Will it be OK to eat produce from my garden, or fish from the Walloomsac river?
Soil and river water have not yet been tested for PFOA. We know people have many questions about this, and the Health Department is reviewing the science to help answer these questions.

PFOA and Human Health

Is PFOA found in humans?
Studies show that human exposure to PFOA is widespread, and that most people have low levels of PFOA in their blood. PFOA does not break down in the human body and stays in blood for years after exposure, so levels of PFOA detected by a special blood test would reflect total exposure over many years. The time it takes for PFOA blood levels to go down by half is about two to four years, assuming there is no additional exposure to the chemical.

What health effects are associated with exposure to PFOA?
PFOA ingested over time could lead to health effects including liver toxicity, kidney damage, increased risk for cardiovascular disease, adverse effects on the reproductive system, immune system, infant and child development, and possibly some cancers, specifically testicular, prostate, thyroid and kidney cancer.

Is there a medical test that can tell me if I have been exposed to PFOA?
Yes. PFOA can be measured in blood, but the test is not routinely done. PFOA would be expected at low levels in the blood of almost all Americans. The results of blood tests can be used to determine if a person's PFOA blood level is lower than, similar to, or higher than blood lead levels found in the general population.

When should I see a health care provider?
If PFOA is detected in your water, or if you or family members have signs or symptoms that you think are caused by PFOA exposure, discuss your concerns with your family's health care provider. The Health Department is providing health care providers in the area with information about recommended clinical blood tests.

For questions about potential health effects of PFOA:
Call the Department of Health toll-free at 800-439-8550.

This fact sheet will be posted on the Health Department's website at healthvermont.gov, and information will be updated as we have more facts.

For questions about testing private wells for PFOA:
Call Chuck Schwer at the Department of Environmental Conservation at 802-828-1138 (switchboard), or 802-249-5324 (cell), or email chuck.schwer@vermont.gov

EXHIBIT C

Vienna releases C8 test samples

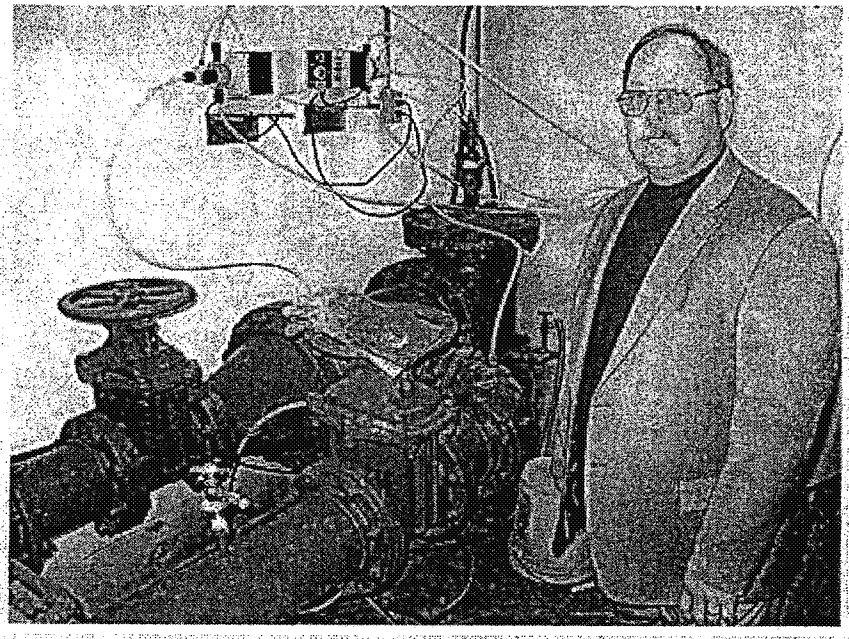
February 24, 2016
By JESS MANCINI (jmancini@newsandsentinel.com) , Parkersburg News and Sentinel

VIENNA - The latest tests of the water in Vienna show C8 levels below the Environmental Protection Agency limits, city officials said at a press conference on Tuesday.

But any concentration is a health hazard, an attorney in the C8 lawsuit and a doctor involved in the C8 health study said.

From samples tested this month, the highest concentration was 0.116 parts per billion in one well, which is below the 0.4 ppb level cited by the Environmental Protection Agency as a health risk, Vienna Mayor Randy Rapp said. C8 was used by DuPont at the Washington Works to make Teflon, a non-stick coating with numerous applications including cookware.

Article Photos



Vienna Mayor Randy Rapp poses for a photo in the treatment room for wells 13 and 14 near 58th Street. (Photo by Jess Mancini)

Concentrations were 0.106 ppb at well 14, 0.116 at 13, 0.0505 at 12 and 0.115 at 11 in the 58th Street well field; 0.104 at 7 and 0.109 at 8 in the 32nd Street field; and 0.0727 at 9 and 10 at the Sam's Club field, according to the results from the testing laboratory, ALS Group USA from Pennsylvania.

"That's bad," said Harry Deitzler, the attorney representing the clients in the C8 lawsuit against DuPont.

Deitzler cited the situation in New York where the state Department of Health ordered the town of Petersburgh to supply bottled water when levels of C8 were detected at less than 0.1 ppb and EPA Region 2 has indicated that residents of nearby Hoosick Falls, N.Y., should not drink water with levels at 0.1 ppb or more, according to media reports. In New Jersey, the Department of Health health advisory standard is 0.04 ppb.

C8 contamination was the basis of a class-action lawsuit against DuPont.

The settlement led to the C8 health study, which tracked the medical history of about 70,000 people in the region and found probable links between C8 exposure and kidney cancer, testicular cancer, ulcerative colitis, thyroid disease, pregnancy induced hypertension, including preeclampsia and hypercholesterolemia. Also, DuPont was required to pay for carbon filters to clean the water in systems, including Lubeck, Belpre, Little Hocking, Pomeroy and Tuppers Plains.

DuPont is the only source of C8, Deitzler said.

Filtration systems should be immediately installed as no level of C8 is safe, said Dr. Paul Brooks, whose company Brookmar conducted testing for the original C8 Health Project. For example, the science study shows C8 at levels of only 0.05 ppb in the body can lead to high cholesterol and affect the immune system, he said.

Even if exposure to C8 was zero, it could be years before it is no longer in the human body, depending on the concentration present, Brooks said. Moreover, the concentration of C8 is passed from mother to child, he said.

"That's why this stuff has got to be gotten out of the water," Brooks said.

The priority is the safety of the water supply, Rapp said Tuesday.

Carbon filters would cost the City of Vienna $6 million for each of its well fields because of how the water is collected, Rapp said.

Water is treated at the well fields then goes to the customer, Metz said. In Parkersburg, water goes from the well field to a central point at the treatment plant, he said.

The most recent testing in Parkersburg was done in September, with the levels ranging from 0.072 ppb to 0.013 ppb in three wells and non-quantifiable at two other wells. Testing of finished, or treated, water revealed a concentration of 0.031 ppb.

Vienna has stepped up the frequency of its tests as a matter of public safety and to determine a trend before other action is taken, which could include removing a well from service, Rapp said.

"We don't have enough data," he said.

Previous tests were done in May and December. The next test will be on March 14, Rapp said. Another change is each well is being individually tested rather than each well field as a combination, Metz said.

The EPA also is testing the water, he said. However, the city is having the water independently tested to ensure the accuracy of the results, Rapp said.

EXHIBIT D

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
E. I. du Pont de Nemours	)	**DOCKET NOS. TSCA-HQ-2004-0016**
and Company,	)	**RCRA-HQ-2004-0016**
	)	**TSCA-HQ-2005-5001**
RESPONDENT	)	

ORDER DENYING MOTIONS FOR ACCELERATED DECISION ON COUNTS II AND III
ORDER SETTING PREHEARING EXCHANGE SCHEDULE FOR COUNTS II, III, AND IV

Procedural Background

The complainant in this matter is the Office of Civil Enforcement[1] ("OCE" or "Complainant") of the United States Environmental Protection Agency ("the EPA"). OCE contends that Respondent, E.I. du Pont de Nemours and Company ("DuPont" or "Respondent"), committed violations of the Toxic Substances Control Act ("TSCA") and Resource Conservation and Recovery Act ("RCRA"). On July 8, 2004, OCE filed its first complaint in this matter, the Complaint and Notice of Opportunity for Hearing ("Complaint"), under docket numbers TSCA-HQ-2004-0016 and RCRA-HQ-2004-0016, to which DuPont filed its Answer and Request for Hearing ("Answer").

OCE alleges, in Counts I and II, that DuPont violated Section 8(e) of TSCA, which provides that:

> Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the [EPA]

[1] The Office of Civil Enforcement is the new name for the Office of Regulatory Enforcement. Notice of Office Name Change (Feb. 17, 2005).

B. EPA's Authority to Request Information

In its initial Complaint (and Amended Complaint), OCE alleged that C-8 is a "hazardous constituent," and then amended its Complaint in response to DuPont's Motion for Accelerated Decision, to add an allegation that PFOA (i.e., "C-8" or "APFO") "is a discarded material and a 'solid waste' as defined under RCRA § 1004(27), 42 U.S.C. § 6903(27) and a 'hazardous waste' as defined under RCRA § 1004(5), 42 U.S.C. § 6903(5)." Amended Complaint ¶ 34; *see also id.* ¶¶ 99, 101. In seeking amendment of the Complaint, OCE stated that the allegation was added for the purpose of responding to DuPont's legal arguments about EPA's authority to address PFOA under Section 3004(u) of RCRA and to address the factual issue raised by DuPont regarding whether PFOA is a hazardous waste, but that OCE need not establish that PFOA is a hazardous waste, and that therefore the allegation is not necessary in order to prevail on Count III. Motion for Leave to File First Amended Complaint (Oct. 13, 2004) at 2.

In essence, DuPont argues that the EPA did not have the authority to request "known toxicological information" about C-8 under the statutory provisions of RCRA because C-8 is neither a hazardous constituent nor a hazardous waste listed or identified under EPA's regulations. DuPont's Count III Reply at 2-3. DuPont argues that Congress expressly limited EPA's authority to require corrective action under Section 3004(u) of RCRA, 42 U.S.C. § 6924(u), to hazardous wastes and hazardous constituents identified or listed by EPA in its regulations, rather than the statutory definition in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).[53] DuPont's Count III Reply at 1-3; *see also* DuPont's Post-Argument Br. at 20-27. Furthermore, DuPont argues that its corrective action permit expressly incorporated EPA's regulatory definition of hazardous waste rather than the statutory definition and that the Permit did not "expand" EPA's statutory authority. *Id.* at 1-3.

Section 3001 of RCRA, titled "Identification and listing of hazardous waste," provides, *inter alia*:

---

[53] Section 3004(u), 42 U.S.C. § 6924(u), titled "Continuing releases at permitted facilities," of RCRA provides:

> Standards promulgated under this section shall require, and a permit issued after November 8, 1984, by the [EPA] Administrator or a State shall require, corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under this subchapter, regardless of the time at which waste was placed in such unit. Permits issued under section 6925 of this title [i.e., Section 3005 of RCRA] shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

I remind the parties that if they cannot settle this matter, an evidentiary hearing will be held in accordance with Section 556 of the Administrative Procedure Act, 5 U.S.C. § 556.

Finally, I instruct the parties that all future pleadings, including exhibits, shall be submitted in binders. Furthermore, I instruct the parties that all future briefs, memoranda, and motions greater than 15 pages in length (excluding attachments) shall contain a table of contents and a table of authorities with page references.[62]

So ordered.

Dated: March 29, 2005
Washington, D.C.

Barbara A. Gunning
Administrative Law Judge

[62] *See* 40 C.F.R. § 22.4(c)(10).

EXHIBIT E

JANUARY 27, 2016

Governor Cuomo Announces Immediate State Action Plan to Address Contamination in Hoosick Falls

Emergency regulation issued to classify PFOA as a hazardous substance; Saint-Gobain facility to be classified as a State Superfund Site to unlock state resources and legal remedy to address contamination

State will conduct Health Risk Analysis to establish PFOA drinking water guidance level; retest private wells in the village of Hoosick Falls; and immediately install filtration systems at school and other community gathering places

State hotline (1-800-801-8092) established to help public stay informed

Governor Andrew M. Cuomo today announced a series of immediate actions by New York State to address contamination in the Village of Hoosick Falls' water supply and at the Saint-Gobain Performance Plastics Site. These

announcements follow today's meeting between the Governor and senior state and local officials.

"We are taking immediate and aggressive actions to protect the health of Hoosick Falls residents," **said Governor Cuomo.** "These actions will ensure that the source and extent of PFOA contamination is identified, and all necessary steps are taken to swiftly address the chemical's presence. My administration is investigating this situation fully, and we will do whatever is necessary to ensure safe, clean drinking water for local residents."

These actions include to:

- **Issue Emergency Regulation to Classify PFOA as Hazardous Substance:** The state Department of Environmental Conservation today issued an emergency regulation to classify Perfluorooctanoic acid (PFOA), the contaminant found in the Village's water supply, as a hazardous substance. This provides DEC with the legal authority to pursue State Superfund designation and cleanup of the site using State Superfund resources.
- **Classify Saint-Gobain Facility as a State Superfund Site to Unlock State Resources to Address Contamination:** Further, the state announced it will classify the Saint-Gobain Performance Plastics Corporation McCaffrey Street Plant and other possible sources of contamination that may be identified in Hoosick Falls as State Superfund sites to unlock state funding resources under the State Superfund Program to address the contamination in the community. DEC has already initiated its investigation and inspected the Saint-Gobain property. If in the course of its continuing investigation DEC finds any additional sources of PFOA contamination,

they will also be listed. The Superfund Class 2 designation will allow the state to use State Superfund resources to investigate and clean up PFOA contamination much more quickly than waiting for a federal Superfund designation. In addition, the state will be able to seek cost recovery for the investigation and cleanup activities. DEC will collaborate closely with EPA in the investigation of PFOA in groundwater, soil and other media in Hoosick Falls to determine appropriate cleanup activities.

- **Conduct Health Risk Analysis to Establish PFOA Drinking Water Guidance Level:** To address the water supply contamination, the state Department of Health will conduct a risk analysis, examining the latest national research, to establish a drinking water guidance level for PFOA.
- **Retest Private Wells in the Village of Hoosick Falls:** In addition, the state Department of Health will retest 24 private wells in the vicinity of the Saint-Gobain facility.
- **Immediately Install Filtration Systems at School and Other Community Gathering Places:** Out of an abundance of caution, the state committed to installing water filtration systems at the local school, public health facilities and other community gathering places.
- **Blood Testing of Community Members to Begin in Mid-February:** Beginning in mid-February, DOH will begin blood testing for community members for those who wish to be tested.
- **Establish State Hotline for Public to Stay Informed:** Residents can contact **1-800-801-8092** for more information.

Further, once PFOA contamination is addressed, the state committed to work with the community and banks to safeguard property values.

Department of Environmental Conservation Acting Commissioner Basil Seggos said: "Under the direction of Governor Cuomo, New York State is working collaboratively with all levels of government from the EPA to the village and town, to address the contamination in Hoosick Falls. Classifying PFOA as a hazardous substance and making the Saint-Gobain site a State Superfund site will free up resources to investigate and clean up the contamination quickly. We will continue our open dialogue with local officials and the people of

Hoosick Falls to ensure they are informed throughout our investigation and remediation."

Department of Health Commissioner Dr. Howard Zucker said: "The actions taken today by Governor Cuomo, the Department of Environmental Conservation and the Department of Health will safeguard the residents of Hoosick Falls and help address their concerns. The Department of Health will continue to test private wells, and will soon begin a blood testing program to measure residents' exposure to PFOA. Additionally, DOH will continue to examine the latest and best scientific research to establish a drinking water guidance level for PFOA."

Senator Kathy Marchione said: "I want to personally thank Governor Cuomo for convening this afternoon's highly productive and positive meeting regarding Hoosick Falls. The announcement that the state recognizes the seriousness of this issue and is taking purposeful action that will help Hoosick Falls families is welcome news. Our discussion today focused on realistic solutions including the state's regulation of PFOAs, testing of all local wells, blood testing and carbon filtration systems to help protect the health and well-being of families in Hoosick Falls. The positive steps agreed to today are welcome news for the community. I have been carefully monitoring this situation and will continue advocating for Hoosick Falls families as this process moves forward."

Town of Hoosick Supervisor Mark Surdam said: "I am thankful for the Governor's recognition of the problem our community is facing with its water supply, and for the actions the state taking today. I want to assure all of the residents in the Town of Hoosick that we are undergoing a tremendous effort to deal with these concerns."

Village of Hoosick Falls Mayor David Borge said: "I am grateful for Governor Cuomo's swift action to help our community quickly restore the use of our water supply – and am pleased by the level of coordination by state agencies

responding to this issue. This is a major step forward for all residents of the greater Hoosick Falls community."

Hoosick Falls Central School Superintendent Kenneth Facin said: "Today's meeting with Governor Cuomo was productive and meaningful, and promises real results for our students and parents. We are appreciative to be a part of a singular, concerted effort to rectify the environmental issues surrounding our water supply. As a proactive measure to ensure the health and safety of our students, the state is assisting our school district with the installment of a carbon filtration system. We are grateful for the Governor's leadership in galvanizing resources to assist our community."

State's Earlier Actions to Address PFOA Contamination

Today's actions build upon DEC and DOH's initiatives announced earlier this month to address the PFOA contamination to protect public health and the environment. The state urged EPA to take vigorous action on the federal level to regulate PFOA and to quickly add the Hoosick Falls site to the Superfund National Priorities List. The state, Saint-Gobain and the Village are collaboratively working on an agreement to install water treatment systems to remove hazardous chemicals from the Village's water supply. In addition, DOH is undertaking a cancer registry study to investigate the incidence of cancer among Village residents and biomonitoring studies. Further DOH is offering PFOA biomonitoring to measure the level of PFOA in Village residents.

PFOA was detected in the Village's public drinking water in 2014. Since then, DOH has worked closely with the Village to provide technical advice and assistance for water sampling and to evaluate water treatment options to eliminate health risks. Because the levels of PFOA in public water were higher than the EPA health advisory level, DOH determined that people should reduce their exposure by avoiding the use of tap water for drinking and cooking. In

addition, DOH continues to monitor private wells and will have more results very soon.

Although the use of PFOA is being phased out, it is still used to make household and commercial products that resist heat, and repel oil, stains, grease, and water. This includes nonstick cookware, surface coatings for stain-resistant carpets and fabric, and paper and cardboard food packaging. Studies of people have associated exposure to PFOA with an increased risk for several health effects. This includes associations with effects on the liver, immune system, thyroid gland, cholesterol levels, blood pressure during pregnancy, and kidney and testicular cancer.

Contact the Governor's Press Office

NYC Press Office: 212.681.4640

Albany Press Office: 518.474.8418

Contact us by email: press.office@exec.ny.gov